

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

HEADWATER RESEARCH LLC,

Plaintiff,

v.

T-MOBILE USA, INC. AND SPRINT CORP.,

Defendants.

Case No. 2:23-cv-00379-JRG-RSP

LEAD CASE

JURY TRIAL DEMANDED

HEADWATER RESEARCH LLC,

Plaintiff,

v.

T-MOBILE USA, INC. AND SPRINT CORP.,

Defendants.

Case No. 2:23-cv-00377-JRG-RSP

JURY TRIAL DEMANDED

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to Local Patent Rule 4-3, and the Court’s Docket Control Order (Dkt. 63), Plaintiff Headwater Research, LLC (“Headwater”) and Defendants T-Mobile USA, Inc. and Sprint Corp. (collectively, “Defendants” or “T-Mobile”) (all together, the “parties”) respectfully submit the following Joint Claim Construction and Prehearing Statement.

I. AGREED CLAIM CONSTRUCTIONS (P.R. 4-3(A)(1))

The parties have not identified any agreed claim constructions.

II. DISPUTED CLAIM CONSTRUCTIONS (P.R. 4-3(A)(2))

The parties' proposed constructions of disputed terms are provided in the chart below. The parties' proposed constructions are also set forth in the accompanying **Exhibit A**, along with the intrinsic and extrinsic evidence on which the parties intend to rely.

A. U.S. Patent No. 8,589,541

Term No.	Claim Term	Headwater's Proposed Construction	T-Mobile's Proposed Construction
1	"one or more prospective ... communications [over a wireless network]" (claims 1-174)	Not indefinite; no construction necessary; plain and ordinary meaning.	Indefinite.
2	"service usage activity" (claims 1-174)	No construction necessary; plain and ordinary meaning.	"an activity by the first software component that requires usage of a wireless network connection"
3	"background activity" (claims 1-174)	Not indefinite; no construction necessary; plain and ordinary meaning.	Indefinite.

B. U.S. Patent No. 9,198,042

Term No.	Claim Term	Headwater's Proposed Construction	T-Mobile's Proposed Construction
4	"device service state" (claims 1-18)	No construction necessary; plain and ordinary meaning.	"information about the current status of the device required to adequately define the actions needed from the service controller to maintain proper device-assisted

			service (DAS) system operation”
5	“service policy setting” (claims 1-18)	“Policy setting for a network data service”	“rule for governing network service usage that can be implemented on the device”
6	“protected partition” (claims 1-18)	No construction necessary; plain and ordinary meaning.	“a secure device assisted service execution environment”

C. U.S. Patent No. 9,215,613

	Claim Term	Headwater’s Proposed Construction	T-Mobile’s Proposed Construction
7	“differential traffic control policy” (claims 1-24)	No construction necessary; plain and ordinary meaning.	“rules for controlling network traffic that distinguishes between two or more things”
8	“classify whether a particular application capable of both interacting with the user in a user interface foreground of the device, and at least some Internet service activities when not interacting with the user in the device user interface foreground, is interacting with the user in the device user interface foreground” (claims 1-24)	Not indefinite; no construction necessary; plain and ordinary meaning.	Indefinite.
9	“the user of the device is directly interacting with that application or perceiving any benefit from that application” (claim 6)	Not indefinite; no construction necessary; plain and ordinary meaning.	Indefinite.

III. ANTICIPATED LENGTH OF TIME NEEDED FOR THE CLAIM CONSTRUCTION HEARING (P.R. 4-3(A)(3))

The parties estimate that three hours will be needed for the claim construction hearing. The parties agree that each side will be allocated half of the total time permitted for the hearing.

IV. PROPOSED WITNESSES TO BE USED AT THE CLAIM CONSTRUCTION HEARING (P.R. 4-3(A)(4))

No party proposes to call witnesses at the claim construction hearing.

V. OTHER ISSUES TO BE ADDRESSED PRIOR TO CLAIM CONSTRUCTION HEARING (P.R. 4-3(A)(5))

The parties are not currently aware of any issues that they would propose taking up at a prehearing conference prior to the claim construction hearing.

Dated: August 9, 2024

/s/ Michelle Zhu

Katherine Q. Dominguez
(NY Bar No. 4741237)
kdominguez@gibsondunn.com
Josh A. Krevitt
(NY Bar No. 2568228)
jkrevitt@gibsondunn.com
Brian Rosenthal
(NY Bar No. 3961380)
broenthal@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

Robert Vincent
rvincent@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201-2923
Telephone: (214) 698-3100
Facsimile: (214) 571-2900

Andrew W. Robb
(CA Bar No. 291438)
arobb@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
310 University Ave
Palo Alto, CA 94301
Telephone: (650) 849-5300

Michelle Zhu
mzhu@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Telephone: (202) 777-9413

Melissa R. Smith
melissa@gillamsmithlaw.com
GILLIAM & SMITH, LLP
303 South Washington Avenue

/s/ Marc Fenster

Marc Fenster
CA State Bar No. 181067
Email: mfenster@raklaw.com
Reza Mirzaie
CA State Bar No. 246953
Email: rmirzaie@raklaw.com
Brian Ledahl
CA State Bar No. 186579
Email: bledahl@raklaw.com
Ben Wang
CA State Bar No. 228712
Email: bwang@raklaw.com
Adam Hoffman
CA State Bar No. 218740
Email: ahoffman@raklaw.com
Dale Chang
CA State Bar No. 248657
Email: dchang@raklaw.com
Paul Kroeger
CA State Bar No. 229074
Email: pkroeger@raklaw.com
Neil A. Rubin
CA State Bar No. 250761
Email: nrubin@raklaw.com
Kristopher Davis
CA State Bar No. 329627
Email: kdavis@raklaw.com
James S. Tsuei
CA State Bar No. 285530
Email: jtsuei@raklaw.com
Philip Wang
CA State Bar No. 262239
Email: pwang@raklaw.com
Amy Hayden
CA State Bar No. 287026
Email: ahayden@raklaw.com
Jason M. Wietholter
CA State Bar No. 337139
Email: jwietholter@raklaw.com
Qi (Peter) Tong
TX State Bar No. 24119042
Email: ptong@raklaw.com

Marshall, TX 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257

*Attorneys for Defendants
T-Mobile USA, Inc. and Sprint Corp.*

RUSS AUGUST & KABAT
12424 Wilshire Blvd., 12th Floor
Los Angeles, CA 90025
Telephone: 310-826-7474

Andrea L. Fair
WARD, SMITH & HILL, PLLC
1507 Bill Owens Parkway
Longview, Texas 75604
Telephone: 903-757-6400
andrea@wsfirm.com

*Attorneys for Plaintiff
Headwater Research LLC*

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 9th day of August 2024, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Marc Fenster

Marc Fenster

CERTIFICATE OF CONFERENCE

The undersigned certifies that counsel complied with the requirements of Eastern District of Texas Local Rule CV-7(h). The parties are in agreement on filing this Joint Motion.

/s/ Marc Fenster

Marc Fenster